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March 18, 2003

The Honorable John Breaux
United States Senate
503 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Breaux:

I am writing to express my strong opposition to S.545 introduced earlier this month, which exempts association health plans from state regulation. Such legislation will eliminate oversight by thousands of state regulators experienced in protecting consumers from fraud and abuse in the insurance industry.

Proponents of AHP legislation claim that the Department of Labor already has the sufficient resources to oversee the new plans and will be prepared to prevent insolvencies, fraud or other abuse. I am concerned that the Department of Labor has neither the resources nor the expertise to regulate insurance products.

Our state has learned from past and current experience that this area is fraught with peril. We have seen how unscrupulous operators, in only a matter of a few months, can take in huge amounts of premium and rapidly divert those monies for personal gain. Tens of thousands of citizens are left with unpaid claims. While fighting both illness and the inability to access necessary healthcare due to lack of viable coverage, they also face loss of everything they have worked all their life to accumulate.

S.545 still fails to include adequate capital standards and solvency requirements, both of which are inferior to existing state standards. Furthermore, self-reporting of financial problems simply will not work. The proposed legislation allows significant risk selection and eliminates important consumer protections such as internal and external appeals, adequate network requirements and review of marketing materials. Most importantly, the proposed legislation provides no additional resources for the Department of Labor. Consumers will expect protection from the government. Where will they turn for recourse when their plans fail?

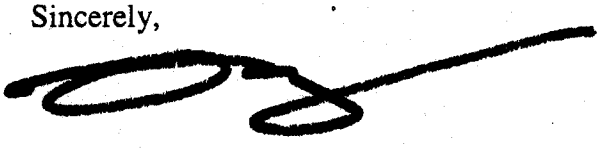
Ensuring available and affordable health coverage for Louisiana citizens, particularly that of small businesses, is of significant importance to the Louisiana Department of Insurance. My office has spent the last couple of years studying various

state proposals, as well as developing Louisiana-specific legislative proposals for addressing the uninsured. At the same time, we are battling problems with both fully insured association sponsored health plans, and the latest onslaught of unauthorized health plans proliferating across the country.

I urge Congress to oppose any congressional proposal that would preempt state laws and leave the consumer unprotected. The Louisiana Department of Insurance is dedicated to protecting the rights of the public and ensuring the integrity of the insurance industry. Any federal legislation that removes state protections would be a major step backward for health care consumers.

I commend Congress in their efforts to resolve these problems. These issues are extremely complex and do not lend themselves to easy solutions. If my office can be of further assistance to you, please have a member of your staff contact Pam Williams in my Office of Health at 225-219-4774.

Sincerely,



J. Robert Wooley
Acting Commissioner of Insurance

JRW:DEC
attachments

ASSOCIATION HEALTH PLANS ARE BAD FOR CONSUMERS

Since the beginning of the debate on Association Health Plans (AHPs) the NAIC has joined with the National Governors' Association and the National Conference of State Legislatures, as well as several insurance and consumer groups, in opposing AHP legislation. This opposition stems from our strong belief that AHPs, as currently proposed in House-passed Patients' Bill of Rights legislation, would: ***1) Threaten the stability of the small group market; and 2) Provide inadequate benefits and insufficient protection to consumers.***

AHPs would fragment and destabilize the small group market, resulting in higher premiums for many small businesses.

- Many states have acted to make health insurance more affordable to small businesses by creating small group insurance pools that spread risk across the state. The proposed legislation would allow employers with younger, healthier workforces to withdraw their employees from a state's small group market, thus leaving behind small businesses with older and sicker employees. While the rates may drop for those businesses that belong to an association offering health coverage, premiums will increase for the remaining pool.

- The legislation would exempt AHPs from state minimum benefit and service area requirements, thus allowing them to "cherry pick" good risk through the design of the benefit package or choice of service area. AHPs could also have limited risk simply due to the types of businesses that belong to the association.

- The proposal would not prevent employers from jumping back into the general small group market pool when they need more coverage (access is guaranteed under HIPAA portability requirements) and then switching back to the AHP after that care is received. Such adverse selection could significantly raise rates in the general pool.

AHPs would be exempt from state solvency requirements, patient protections, and oversight exposing consumers to significant harm.

- The proposed AHP legislation would allow certain AHPs to self-insure and accept insurance risk. These risk-bearing AHPs would not be subject to state solvency requirements that are in place to ensure that insurance companies have sufficient resources to avoid financial failure. Instead, inadequate federal solvency requirements are established -- a maximum surplus of $2 million would not provide enough protection. Likewise, the stop-loss coverage requirements would be ineffective because there would not be sufficient oversight to ensure that adequate coverage exists when needed.

  States have been moving toward a risk-based standard that provides consumers greater assurance that their health plan has the resources necessary to fulfill their contracts. If this AHP legislation is enacted consumers could expect plan failures like we saw with Multiple Employer Welfare Arrangements (MEWAs) in the 1990s.

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JANUARY 2002

- As currently proposed, AHPs would not be subject to state patient protections, including: direct access to an OB/GYN; access to emergency care; access to specialists; mandatory grievance procedures; and required internal and external appeals timelines and rights. Fewer consumers would have their rights protected.

- Oversight of AHPs would be inadequate at best. The AHP legislation does not include new resources for federal regulators and depends primarily on self-reporting to identify potential financial problems. States currently provide the oversight and regulation necessary to protect consumers from plan failure and fraud; the federal government would not be able to effectively duplicate the state structure.

TESTIMONY

OF THE

NATIONAL ASSOCIATION OF

INSURANCE COMMISSIONERS

BEFORE THE

SENATE SMALL BUSINESS AND

ENTREPRENEURSHIP COMMITTEE

ON

SMALL BUSINESS AND HEALTH CARE

Presented by:

Sandy Praeger
Commissioner of Insurance
State of Kansas

February 5, 2003

Introduction

Good morning Madame Chairwoman and members of the Committee. My name is Sandy Praeger and I am the newly elected Commissioner of Insurance for the State of Kansas. I was previously elected to three terms in the State Senate, being elected as Vice President of the Kansas Senate in 2001, and one term in the Kansas House of Representatives. I served as Chair of the Financial Institutions and Insurance Committee in the Senate and am the Past Vice Chair of the Health Policy Committee for the National Conference of State Legislatures. I am currently serving as Chair of the National Association of Insurance Commissioners' Health Insurance Task Force.

I am testifying this morning on behalf of the National Association of Insurance Commissioners (NAIC), the organization that represents the chief insurance regulators from the 50 states, the District of Columbia, and four U.S. territories. The primary objective of insurance regulators is to protect consumers and it is with this goal in mind that I comment today generally on the small business healthcare crisis, and in particular the proposal to create Association Health Plans (AHPs).

At the start, I would like to emphasize that the states recognize the importance of ensuring that health coverage is affordable and available for small businesses and offer the full support of the NAIC in developing legislation that

will reach these goals. States have acted aggressively over the past ten years to stabilize and improve the small group market. Many states have even implemented laws that allow associations to provide insurance to their members. However, the members of the NAIC remain strongly opposed to the AHP legislation that has been offered in Congress. More can and must be done to make health insurance more affordable for small business employees, but the AHP legislation, as currently drafted, would do more harm than good.

A. What States and the NAIC Have Already Done to Address the Problem

Throughout the 1990's, the states and the NAIC have devoted significant attention to the problem of making health insurance available to small employers. We have taken a variety of approaches in this effort.

1. Small Group Reform

One approach the states have taken is small group reform. Before the enactment of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 46 states had enacted some kind of small group reform based in varying degrees on NAIC models.

In 1992, the members of the NAIC adopted the Small Employer and Individual Health Insurance Availability Model Act. It required the guaranteed issue of a basic and standard health benefit plan by all health

carriers doing business in a state's small group market. It also required guaranteed renewability, subject to certain exceptions, and established rating bands to assure consumers are not priced out of the market and risk is spread over a larger pool. In essence, the block of small group business is treated much like large groups for rating purposes.

In 1995, the NAIC refined this model. The 1995 version required guaranteed issue and guaranteed renewability of all products offered by a carrier in a state's small group market. It also required adjusted community rating with adjustments permitted only for geographic area, age, and family composition.

Today, our members are examining the impact of HIPAA and determining what further efforts are needed by states to assist small businesses in the provision of coverage.

2. Purchasing Pools

Allowing small businesses to form purchasing pools, sometimes called purchasing alliances, is another approach that states have taken to make health insurance more available to small groups. By joining together, small groups can somewhat reduce their administrative costs, provide their employees with more choice, and command better prices.

The NAIC has devoted considerable attention to health insurance purchasing pools. In 1995 the NAIC adopted three model acts allowing for the creation of purchasing alliances. These models represent the NAIC's complete agreement with the concept that small employers should have the opportunity to join together to purchase health insurance.

At least twenty-two states have either adopted legislation that creates some kind of purchasing pool or have allowed purchasing pools to operate without legislation. In 2000, Kansas passed legislation creating the Kansas Business Health Partnership, which allows for small groups to pool and establish their own set of benefits. It is not comprehensive insurance but it is a low cost alternative for businesses especially those with low wage workers.

Again, the NAIC agrees that more needs to be done to expand coverage to small businesses. Reforms should be broad, addressing both the affordability of insurance (bringing down the cost of coverage to small businesses, possibly through financial incentives) and the availability of insurance (expanding choice and promoting competition). However, the AHP legislation is not the answer and would have the effect of reversing many of the gains that have been made over the last 10 years.

B. Specific Concerns About Current AHP Legislation

1. The AHP Legislation Would Undermine State Reforms

Before state small group market reforms were implemented, the small group market was fragmented into various pools based on risk. If a small employer had healthy employees in a relatively safe working environment the employer could easily find coverage at a good rate. However, if one of the employees became sick, the employer would be shifted to a higher risk pool and often priced out of coverage. Those who started with sicker or higher risk employees were often priced out of the market from the beginning.

State small group market reforms forced insurers to treat all small employers as part of a single pool and allow only modest, and in some states no, variations in premiums based on risk. This spreading of risk has brought some fairness to the market. The AHP legislation in Congress would undermine state reforms and once again fragment the market. Each association would create its own risk pool that, due to the benefits provided, types of businesses in the association, or area serviced, could have significantly lower risk than the general market. While the bill does

make some effort to reduce "cherry picking" the NAIC believes the provisions would be inadequate.

In Kansas, we have association health plan legislation introduced this session that, without the proper safeguards in place, could disrupt the market. In fact some in the industry have proposed abolishing the small group reform in Kansas if we allow this kind of erosion into that market.

2. **The AHP Legislation Would Undermine HIPAA Reforms.**

The guaranteed issue requirements of the Health Insurance Portability and Accountability Act of 1996 allows small employers to switch from one plan to another without denial. If the AHP legislation were to pass, small employers would be able to purchase less expensive association health plan coverage that does not contain mandated benefits or comply with any other state requirements. When an employee needs better coverage, the employer would be free to enter the regulated small group market and be guaranteed the coverage under HIPAA.

This self-selection is extremely disruptive to the marketplace and will create a very unstable situation in an already fragile small group market, likely reducing the number of insurers willing to offer coverage in the general market. Insurance is of little use unless the costs of caring for the

relatively few can be distributed among the many who are healthy. This is one of the key tenets behind HIPAA.

3. The AHP Legislation Would Lead to Increased Plan Failures and Fraud

Proponents of the AHP legislation claim that the Department of Labor already has sufficient resources to oversee the new plans and will be able to prevent any insolvencies or instances of fraud. This simply is not the case. The Department of Labor has neither the resources nor the expertise to regulate insurance products. The states have invested more than 125 years in regulating the insurance industry. State insurance departments nationwide employ over 10,000 highly skilled people, and the combined budgets of state insurance departments total more than $700 million. The AHP bill provides no new resources for regulating these plans.

While we acknowledge State regulation does increase costs, it exists to protect consumers. Insurance is a complicated business, involving billions of dollars, with ample opportunity for unscrupulous or financially unsophisticated entities to harm millions of consumers. Unless oversight is diligent, consumers will be harmed.

This is not just speculation, but fact borne of years of experience with Multiple Employer Welfare Arrangements (MEWAs), multi-state association plans, out-of-state trusts, and other schemes to avoid or limit

state regulation. Within the last year, 16 states have shut down 48 AHP-like plans that had been operating illegally in the state, many through bona fide associations. Association plans in several states have gone bankrupt because they did not have the same regulatory oversight as state-regulated plans, leaving millions of dollars in provider bills unpaid.

Each time oversight has been limited the result has been the same – increased fraud, increased plan failures, decreased coverage for consumers, and piles of unpaid claims. Specifically, the NAIC believes the following issues must be addressed:

a. Solvency Standards Must Be Increased

While the solvency standards in the AHP legislation have been increased over the years, they are still woefully inadequate. In particular, the capital reserve requirement for any and all AHPs is capped at $2 million -- no matter the size of the plan. Almost all states require the capital surpluses to grow as the plan grows, with no cap or a far higher cap than that in the federal legislation. If a nationwide AHP were offered to a large association, a capital surplus of only $2 million would result in disaster.

b. AHP Finances Must Receive Greater Oversight

Even if the solvency standards were increased, oversight is almost nonexistent in the bill. Under the bill the AHP would work with an actuary chosen by the association to set the reserve levels with little or no government oversight to ensure the levels are sufficient or maintained. Also, the AHP would be required to "self-report" any financial problems. As we have seen over the past year, relying on a company-picked accountant or actuary to alert the government of any problems can have dire consequences for consumers who expect to have protection under their health plan.

State regulators comb over financial reports and continually check investment ratings to ensure that any potential problems are identified and rectified quickly. AHP plans must be held to the same standard.

Simply limiting participation in AHPs to "bona fide trade and professional associations" and providing limited Department of Labor oversight of self-reported problems will not prevent fraud and mismanagement. Strict oversight is required and this will only occur if all

health plans delivered through associations are licensed and regulated at the state level.

4. The AHP Legislation Would Eliminate Important Patient Protections

Included in the current AHP legislative proposals is the broad preemption of consumer protection laws. Proponents of AHPs will argue that state mandated benefit laws must be preempted so that AHPs do not have to provide coverage for expensive benefits. However, states have a complex regulatory structure in place for insurers. Not only will mandated benefit laws be preempted, but other laws protecting patient rights and ensuring the integrity of the insurers would be preempted as well. A small sample of these laws and actions follows:

- Internal and external appeals processes.
- Investment regulations to ensure that carriers only make solid investments instead of taking on risky investments such as junk bonds.
- Unfair claims settlement practices laws.
- Advertising regulation to prevent misleading or fraudulent claims.
- Policy form reviews to prevent unfair or misleading language.
- Rate reviews. Insurance departments may review rates to make sure the premiums charged are fair and reasonable in relation to the benefits received.
- Background review of officers.

- Network requirements including provider credentialing and network adequacy, to ensure that plans offer a provider network that is capable of delivering covered services.

- Utilization review requirements to ensure that plans have acceptable processes and standards in place to determine medical necessity and to make coverage determinations.

While some of these protections may be offered by AHPs as a service to their association members, there would be no requirement that they do so, and no entity to complain to if a patients' rights are violated by the plan. State insurance regulators act on millions of consumer complaints every year and work hard to protect the rights of patients. AHP participants should have access to the same protections and complaint process.

5. The AHP Legislation Would Cut Funds to High Risk Pools and Guaranty Funds

While the latest version of the AHP legislation would allow states to impose premium taxes on AHP plans – to the extent they are imposed on other insurance plans – it preempts other state assessments. States often use health insurance assessments to fund such important entities as high risk pools (which provide coverage to the uninsurable) and guaranty funds (which help cover claims if a plan is insolvent.) Such programs are vital to the stability of the small group and individual markets and to the

protection of consumers – they must not be undercut by federal preemption.

Conclusion

All of us recognize that it is very important to make health insurance available to small employers. The states have addressed this problem, and will continue to do so. However, the problem is complex and does not lend itself to easy solutions.

The AHP legislation proposed in Congress would put consumers at significant risk and disrupt the health insurance market. The illusion of federal regulation based on company self-reporting of problems will lead to extensive failures. The fragmentation of the small group market will leave many small businesses with higher premiums, or no coverage options at all.

The NAIC opposes AHP legislation as currently drafted and urge Congress not to adopt it. We stand ready, however, to work with this Committee and other members of Congress to draft effective reforms that will address both the affordability and availability issues facing small businesses. Together, we are convinced, the federal government and the states can find real solutions to this critical issue.